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**BEFORE THE ADMINISTRATOR**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

**United States Department of Transportation  
Federal Aviation Administration and The Federal Highway Administration  
United States Department of Defense US Army/National Guard  
United States Department of Energy  
United States Department of the Interior – Bureau of Reclamation**

La Cienega Valley Citizens for  
Environmental Safeguards

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COMPLAINT UNDER TITLE VI  
OF THE CIVIL RIGHTS ACT

COMPLAINANTS

**I. INTRODUCTION**

This is a citizen's complaint under Title VI of the Civil Rights Act of 1964, as amended, \*\*42 U.S.C. §§ 2000d et seq., by the La Cienega Valley Citizens for Environmental Safeguards (Hereafter known as "CES") and 40 individual residents of the La Cienega Valley Area, working for environmental justice throughout New Mexico.

This complaint is filed against the Federal Environmental Protection Agency (hereafter, "EPA"), Federal Aviation Administration (hereafter, "FAA"), The Department of Defense (hereafter DOD), Department of the Army (DOA, Army National Guard Military Construction (Hereafter, ANGMC), Department of Energy (hereafter DOE), Federal Highway Administration (here after (Fhwa), Bureau of Reclamation, State of New Mexico Environment Department (hereafter "NMED"), and the County and City of Santa Fe, New Mexico (hereafter "City" and "County"), which is a recipient of U.S. Environmental Protection Agency ("EPA") assistance within the meaning of \*\*40 C.F.R. §7.25 (b) and/or are recipient of the preceding federal agencies and department federal funding.

The CES represents as a group and individuals (collectively referred to as "the Complainants").<sup>1</sup>

We allege that by approval of the Santa Fe Downs Master Plan on August 14, 2001 and approved with the findings were approved on September 17th 2001 by the County; The approval of the Santa Fe Master Plan at the Airport Advisory Taskforce in November of 2001; The National Guard Military Expansion approval of lease August 11, 2001; by not adequately addressing the following water quality issues a.) Perchlorates or Other contaminant pathways from Los Alamos National Laboratory - Discovered in a report release by the Water quality Task force Jan 2002 b), Aquifer Recharge and Recovery Act (ARRA) final approval September 11, 2001 c.) Lack of Storm Water Mitigation by both the city, the County and NMED, have discriminated on the basis of race, color and national origin against the Latino residents who live near and on the Santa Fe Downs unpermitted landfill site and the Santa Fe Municipal Airport, including many Latino residents who live within 1800 feet. This discrimination violates Title VI of the Civil Rights Act of 1964 and the EPA's implementing regulations, codified at 40 C.F.R. Part 7.

The CES is filing this complaint within 180 days of the date of State, County, and City final action on the approval for development or signature of agreement on contracts and or lease agreements. \*\* 40 C.F.R. § 7.120. The CES has provided the Office of Environmental Justice a priority list and the Office of Civil rights at the EPA, a complete summary of our complaint upon request. The Complainants request that the EPA, the FAA, the FhWA, ANGMC, DOE, and the Bureau of Reclamation make its initial decision accepting or rejecting this complaint within 21 days of the filing of that summary of concerns.

The La Cienega Citizens for Environmental Safeguards ("CES") file this administrative complaint with the Office of Civil Rights of the United States Environmental Protection Agency ("EPA") for an investigation into violations of Title VI of the Civil Rights Act of 1964 by the New Mexico Environment Department ("NMED") and the City and County of Santa Fe ("City" and "County") with regard to its handling of the unpermitted landfill at Santa Fe Downs and the approval of the Santa Fe Downs Master Plan of August 14, 2001. The approval of the Santa Fe Master Plan at the Airport Advisory Taskforce in November of 2001; The National Guard Military Expansion

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1.) Individuals who are represented in the Tort Claim notice filed with the City of Santa Fe and other area residents who have since expressed their wishes to be included, total over 40 individuals, will provide names upon request.

approval of lease August 11, 2001; by not adequately addressing the following water quality issues a.) Perchlorates or other contaminant pathways from Los Alamos National Laboratory b), Aquifer Recharge and Recovery Act (ARRA) Approved on September 11, 2001 c.) Lack of Storm Water Mitigation by both the County and NMED. The NMED, the City, and the County's actions or failures to act have had the effect and the intent of discriminating against the Complainants based on their race or color. The NMED, the City, and the County are recipients of EPA, Federal Highway Administration, Federal Aviation Administration, the Bureau of Reclamation Department of Energy and US Army /National Guard MC assistance within the meaning of 40 C.F.R. § 7.25 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7.

The complainants have a significant minority membership and have actively opposed the operation of the Minority residents of this community live, work, and recreate in the area impacted by these projects. Therefore, the Complainants have been in opposition to these facilities since it was first proposed, have been involved in every administrative proceeding on the permit applications, and have suffered the effects of the NMED, City, and County's discrimination.

## **II. BACKGROUND**

The communities affected by the Santa Fe Downs and the approval of the Santa Fe Downs Master Plan of August 14, 2001; The approval of the Santa Fe Master Plan at the Airport Advisory Taskforce in November of 2001; The National Guard Military Expansion approval of lease August 11, 2001; the following water quality issues a.) Perchlorates or other contaminant pathways from Los Alamos National Laboratory b), Aquifer Recharge and Recovery Act (ARRA) Approved on September 11, 2001 c.) Lack of Storm Water Mitigation by both the County and NMED are Agua Fria, La Cienega, and La Cieneguilla. Many of CES' members are residents of these three areas. These communities were established by Spanish colonization in the 1600's, destroyed in 1680, and then re-settled after 1700. Previous to this, the Pueblo cultures of New Mexico occupied this land for over 5000 years by making use of the water from artesian springs along the Santa Fe River corridor. When the Spanish arrived, these communities were set up as outposts to Santa Fe. From the time of the re-conquest in 1692, the descendants of the Spanish Colonial people have occupied the areas of La Cienega and Agua Fria, which were historically connected by the El Camino Real on the Entrada of Santa Fe. These areas have been designated both by state and national historic statutes under National Historic Preservation Act (NHPA).

According the 2001 U.S. Census, there are 2,051 residents of the Agua Fria area and 3,007 residents of the La Cienega area. These areas have the lowest per capita income and the highest concentration of Latinos in the County and City of Santa Fe. i.e. The US Census and the Poverty in the United States Report by the US Census Bureau

This area has an extensive history of environmental neglect and concentrated development due to the discriminatory land use practices of the NMED, City, and County. For example, \*\*42 U.S.C. §§ 2000d.

The City and County of Santa Fe NM, a recipient of federal financial assistance from EPA and the other preceding agencies, has violated Title VI and the EPA's regulations, and the respective agencies regulations, by allowing:

- Development on Un-permitted landfills and long term extensions on permitted waste and wastewater facilities, that under the water quality permits issued by NPDES that effluent violation occurred in the County with the City's effluent at the Santa Fe Downs and no follow up investigation occurred as a result of the complaint.
- Allowed for the expansion of the Airport without proper oversight through an EIS process both with the extension of the lease to the US Army/ National Guard approved August 11, 2001, which bring 25 Black Hawk helicopters within 12 years to this area and with the expansion of the municipal airport
- Allow for redevelopment district, which allows the sitting of heavy industry to pollute the traditional and historic communities up and down wind within the regional sacrifice zone that has been County controlled with stacked business interest committees.
- Allows LANL to emit perclorates (who knows what other radionuclides) into or near the drinking water supply for the City of Santa Fe. This information was released to the public via the water quality task force on January 8<sup>th</sup>, 2002.
- Allowed regulations to pass that do not adequately address water quality concerns and pollution problems under ASRA - the direct water/effluent injection schemes in the State of New Mexico for return flow credit for more withdrawal right from the Rio Grande to promote further sprawl
- Allows for Stormwater to go uncontrolled and without oversight on various municipal projects,

All these issues impact the low-income and Latino communities. NMED is not only an active participant in the system of siting these facilities, but continues to use a method of administering its permitting authority that results in discriminatory outcomes.



Currently, this area is threatened by...

**Item 1.) Santa Fe Downs Un-Permitted Landfill contamination**

The CES represents as a group and individuals (collectively referred to as "the Complainants".

We allege that by approval of the Santa Fe Downs Master Plan on August 14, 2001 and approved with the findings were approved on September 17th 2001 by the County. Both the County and NMED, have discriminated on the basis of race, color and national origin against the Latino residents who live near and on the Santa Fe Downs unpermitted Landfill site, including many Latino residents who live within 1800 feet of the Landfill. This discrimination violates Title VI of the Civil Rights Act of 1964 and the EPA's implementing regulations, codified at 40 C.F.R. Part 7. Approval of Development without Clean up of Contaminated site on a Public hearing in August but final approval was during the September 18<sup>th</sup>, 2001.

**\*\*The Resource Conservation and Recovery Act -42 U.S.C.A §§ 6942 to 6949 and the Clean Water Act 33 U.S.C.A. §§ 1251 to 1387**  
**The Santa Fe Downs Solid Waste Un-permitted Landfill.**

The 45 acres site is piled over 50 ft high that filled gravel pit over 75 feet deep, 25 years ago. The waste is filled with restaurant and restroom garbage, dead animals, medical waste, manure and agricultural waste. The residents have been protesting this waste disposal site. County Public Works is negotiating privately with Ken Newton, the previous owners of the site, and the current owner of the Albuquerque Downs, who by contract are the responsible parties to clean up the site. CES or area residents are not allowed to sit in meetings with these parties NMED, County of Santa Fe. Part of Por Su Garcias subdivision was built on the landfill, but all the residents there suffer from the odor and constant contaminated smoldering waste in this area. Local officials will not connect two outbreaks of blue baby syndrome. The area is a fire hazard presently not being addressed by county official, or NMED, fire hazards of smoldering manure, medial waste, tires and other solid waste garbage which erupts monthly. Now the Pueblo of Pojoaque owns this land and has hired the CEO a former employee of [REDACTED] to run the SF Downs, who seems to be slowing down the process of clean up. We have had the NMED, the County and the EPA out to look at the problem. They agree that this site needs to be cleaned up, however the County Commission still approved the Master plan to further develop the Down's property (now an Indian gaming facility) with without having first to clean up the waste. The former owners dispute the extent of their liability and the boundaries in which they are responsible for. Yet the County knowingly approved subdivision with the Un-

Permitted Waste problem on it. One person that was the County Attorney at the time of approval of the Por Su Gracias Subdivision is now a County Commissioner. Please see our web site for details on the Downs pollution problems. NMED has reviewed this problem but fails to meet with community stakeholders as to what remedies it has and it has failed to site the appropriate parties for the violation of an unpermitted landfill.

The CES is filing this complaint within 180 days of the date of State, County, and City final action on the approval for development or signature of agreement on contracts and or lease agreements. \*\* 40 C.F.R. § 7.120. The CES has provided a priority list to the Office of Environmental Justice and will provide to the Office of Civil rights at the EPA, a complete brief of our complaint upon request if needed. The Complainants request that the EPA, the FAA, the FHWA, ANGMC, DOE, DOD, and Bureau of Reclamation make its initial decision accepting or rejecting this complaint within 21 days of the filing of that summary of concerns.

• **ITEM 2 - A.) Airport Expansion Complaint**

We are asking for compliance of the NEPA and NHPA process before master approval so that sections of the plan can be mitigated. It is up to the decision making body as to how the process should proceed. It should be that the FAA, EPA or NHPA makes that decision within compliance with the law. There are two issues; 1.) The airport master plan and 2.) The National Guard lease agreement and military construction project at the Santa Fe municipal airport.

The Noise Control Act.

**\*\*The Noise Control Act, 42 U.S.C.A §§ 4901, 4911, 4913, 7641.**

Under the Noise Control Act the federal government has continued to provide funds, grants and contracts with other federal agencies for the expansion, and plans for expansion, of the Santa Fe Municipal Airport, without having provided adequate noise control research and programs. The EPA, FAA and FHWA have violated Title 42 of the Public Health and Welfare Chapter 65 Noise Control Section with regard to the surrounding areas of direct and indirect impact, i.e. the traditional and historic communities of Agua Fria and La Cienega. \*\* 42 U.S.C.A. § 4913. These entities have not conducted a full Environmental Impact Statement (EIS) under NEPA and NHPA. The residents of La Cienega and Agua Fria are entitled to the application of the nationwide Quiet Communities program, which includes nondiscriminatory committees and task forces. Instead, our communities have been subjected to stacked committees and task forces, not having concerns addressed denial of noise studies, and the continued

disregard of noise complaints filed. There are specific pilots that fly planes 100 to 200 hundred feet over our homes, thereby becoming public nuisances. (One such pilot flies a MIG Russian Aircraft and has several older aircraft that we believe exceed safe noise standards.)

**Noise Issues/Non-compliance.** We believe there are limitations to the proposed Part 150 Study, and in particular, drawbacks to having it done in conjunction with a Part 160 Study. (A full argument is not presented here but will support a full brief with in 45 days of submittal of this complaint.) There have been in other places and needs to be done here a complete investigation and study of noise and its effects on public health and welfare, in order to (1) identify and classify causes and sources of noise, and (2) to determine:

- (a) Effects of noises at various levels,
- (b) Projected growth of noise levels in urban areas through the year 2025,
- (c) The psychological and physiological effects on humans,
- (d) Effects of sporadic extreme noise (such as jets near airports) as compared with constant noise,
- (e) Effects on wildlife and property (including values),
- (f) Effects of sonic booms on property (including values); and
- (g) Such other matters as may be of interest to the public welfare, such as changes to a cultural landscape in the case of traditional and historic communities. \*\* 42 U.S.C.A. § 7641.

Attempts thus far by the City to “help” community’s air their concerns about noise issues related to the airport have been a rouse at best, mainly meant to cover themselves in terms of compliance with the Quiet Communities standard. \*\*42 U.S.C.A § 4913 (c). The Airport Advisory Board Task Force set up to help address local residents’ noise concerns has been stacked with pilots by the Mayor and current City Manager who refuse to let even other members of the board express their concerns about the Airport Master Plan. Recently, two board members wished to carefully examine the plan to make recommendations, but the Chair refused to allow this and proceeded to railroad an approval vote. Several members of the board subsequently resigned. The AA Board is a sham and should be disbanded or at least filled with residents that have concerns, which can be legitimately addressed in public hearings, provided we are given equal time to present out concerns which has not been the case in the past.

Additional Problems with the Santa Fe Airport Expansion Master Plan

**Economic:** The Master Plan has another serious flaw. The economic demand-based analysis does not give a true picture of the overall cost to City taxpayers over time. A particular example would be security issues, which in a nod towards 9/11,

have simply now been tacked on to the end of the plan. Additional time needs to be spent integrating security effects into the entire plan and re-working the economic impact and environmental impact analysis. This can only be done if the EIS is first completed before approval of the Master plan. In another case, there is the planned Business Park on the expanded premises, the subject already of a mysterious lawsuit brought against the City, which was apparently settled out of court, but with very vague details and terms. The bottom line of course, is that City officials are salivating to get \$30 million in federal monies for a mere \$1 million investment. But over a few years it will cost the City more than \$60 million to operate, repair and pay out claims against the City and Federal Government for not following the intent of NEPA and NHPA.

**There is a Part 139 Study proposed**, that if approved will open up the airport to all private jets and up to 50-seat passenger commercial airplanes. This has been proposed under the auspices of safety, so that an around-the-clock fire station can be built. But even such a seemingly benign safety measure could ultimately negatively affect funding to the local La Cienega and Agua Fria fire stations. A Part 139 Study is an easy way to get money, but it can end up wreaking havoc environmentally in surrounding communities, and we of course believe those costs will far outweigh the dangling carrot. There is other federal assistance grants that can be applied for which give the City/County the 24/7-fire protection it wants, without further airport expansion. Such alternate funding has not even been considered. And as a matter of fact, the authors of the Master Plan, Coffman and Associates, as well as Airport management, have in essence coerced the public into supporting a Part 139 by erroneously tying its approval to a new indoor baggage claim area. The city is moving forward without looking for federal assistance from grant sources other than the FAA.

**Safety Issues.** First, the increase of traffic on an already busy and dangerous highway (State Road 599, the WIPP route for transporting nuclear materials) is a major community concern. There is also a new outlet road access scheduled for the airport vicinity that causes more safety issues for the WIPP route. [ Federal Highway Administration( FhwA) and FAA] What is the immediate plan for traffic increases on both SR 599 and County Road 56? Second, the increase of flights not only endangers the immediate communities (planes flying directly over homes and increasing chances of crashes such as the recent one in New York), but also hampers the quality of life to Santa Fe and surrounding communities. Third, the screening process for luggage and passengers has been minimal. Is there a plan to implement better processes in light of September 11th? And finally, there appears to be no monitoring of planes after the tower closes and before it opens (9:00pm to 7:00am). Who keeps track of whom is flying in and out of our airport during these hours? What happens if a plane crashes during those

times? All of these security concerns do not seem to be addressed sufficiently in word or budget in the Master Plan.

**\*\*Air Pollution (problems under the Clear Air Act 42 U.S.C.A. §§ 7401 to 7641q).**

Ground-level ozone pollution is the primary component of smog. Smog is normally associated with motor vehicles and industrial sources such as factories, power plants, and incinerators. Air pollution levels from automobiles and many such major industries have stabilized or decreased with time while aircraft continue to emit more and more ground-level ozone precursors - volatile organic compounds and nitrogen oxides - with each passing year. In 1993, for example, airplanes at U.S. airports produced 350 million pounds of these pollutants during their landing and takeoff cycles, more than twice their 1970 total. This is likely to climb even higher as the aviation industry grows. Aircraft pollution is not discussed in the Master Plan

**\*\*Water (problems under the Clean Water Act 33 U.S.C.A §§ 1251 to 1387).** There is no real discussion or plan of long range need, use, and budget for water with the expanded airport facility, industrial park, and National Guard. In addition, the use of de-icing chemicals (particularly ethylene glycol) and other toxic substances (i.e. MTBE and other fuel additives) at airports can present threats to water quality and human health, particularly for airport workers. The run-off management systems that airports are required to implement under the National Stormwater Systems Program are problematic, with gaps in areas of effluent standards, enforcement, and monitoring. The control and disposal of de-icing chemicals constitutes a significant water pollution issue. The residents surrounding the airport are domestic well users to which there have been no studies or no inspections to our knowledge of fuel leaks or other monitoring to protect ground water in the area. (The Santa Fe River runs along the West Side of the Airport.) Under the National Stormwater Program, larger airports that use over 100,000 gallons of de-icing fluids are required to monitor their outflows, but sensitive receiving waters near smaller airports are left at risk. The threshold that requires airports to monitor and sample outflows should be lowered to include smaller airports like ours.

**Other Environmental Issues.** The Master Plan does not indicate any consideration for what an increase of operations will do to the wildlife (eagles, hawks, other birds, and domestic animals such as horses etc.) in the areas surrounding the airport. There is neither any mention of local archeological sites in the Plan. Additionally, petroglyphs in the area stand to be affected due to the increase of flights, noise and pollution. There are reasons that local areas were established in La Cienega and its environs for historic/cultural preservation and riparian/wildlife habitat ecology/conservation.



**B.) The DOD and the EPA oversight the appropriations set-aside for the expansion of the facilities of the US ARMY Air National Guards to bring 25 Black hawk Helicopters to the Santa Municipal Airport.** The US Army National Guard says that they are exempt from having to comply with NEPA or NHPA. Under Section 7641 however, an Administrator must determine public nuisances and find ways to abate such noise. \*\*42 U.S.C.A. § 7641. Such determinations and abatement have not taken place, and despite the lack of research, experiments, demonstrations and studies – which should then have culminated in public hearings - funding for expansion and plans is being appropriated as we speak. The adjacent communities have filed a tort claim notice against the City of Santa Fe for allowing the lease of the National Air Guard Blackhawk Facility, but the National Guard has not responded to the FOIA sent to them for additional information in September of 2001, over four months ago, in which we are now filing a FOIA claim in federal court. This is another example of the inappropriate behavior exhibited by the US Army National Guard to the residents of the area. The lease agreement was necessary to secure the appropriations for the Facilities the lease was signed on August 11, 2001.

The FHWA approved the WIPP Route SR 599, which was built to haul nuclear waste through our community, and now it is allowing more access roads and crossings with lights that will present definite safety hazards. Slowly local land use practices are whittling away the original intention of the WIPP route, which was to haul nuclear waste from Los Alamos. There is also a highway noise issue. Residents of the Vista Primera Subdivision located at the corner of SR 599 and Airport Road have also complained of noise from the road and airport. If there were to be an accident in this area it would have a serious environmental impact on a predominately Hispanic and low-income population.

This road development is being allowed, along with the expansion of the Airport Master Plan, and the continuous virtually unchecked sub-urban sprawling expansion of Santa Fe County - all in the Southwest Sector.

**3. A.) Water quality- issue of Perchlorates in the City of Santa Fe Drinking Water Clean Water Act – Safe Drinking Water Act** violated by DOD and DOE and LANL with Perchlorates at the Rio Grande threatens city water supply - The City of Santa Fe adopted a task force to oversight the potential contaminants from the Cerro Grande Fire and possible contaminants coming from Los Alamos National Laboratory (LANL). LANL and the DOE have never acknowledged the possibility of contaminant pathways that might exist or develop, carrying the radionuclides to the Rio Grande. On Jan 10,



2002 the SF Water Quality Task Force released a report written by Ken Silver and other task force members, some of which are employees of LANL. The report found percholates in the springs adjacent to the Buckman Well Fields (where the City pumps its water). The question that exists is whether the Rio Grande acts as a barrier or if the cone of depression is pulling the contaminants from under the river into the City's water supply and whether there are other contaminants that the task force was not aware of. This area on the Rio Grande is where the City, County, Las Campanas Development and Rancho Viejo plan to do the San Juan Chama water diversion. This would mean a filtration system would be a priority for any diversion project. But more importantly, LANL knew 8 months ago that the percholates existed but did not own up to it until the task force started focusing on pathways and discovered the finding. It is the first time a suggested pathway exists from Mortendad Canyon to the bottom of Pajarito Canyon to the springs. Some members of the task force are currently writing minority reports on this issue. NMED are supposed to be meeting with task force members as to a course of actions and the report outcomes. For a Copy of the report please see the CES website at: <http://www.environmentalsafeguards.com>

**B.) Direct Injection of effluent into the aquifer-** the past year the rules and regs for Aquifer Injection were developed. Hearing was on August 14, 2001 the Water Quality Commission and on September 11, 2001 approved Regulations revisions without addressing the problem of "an occurring bubble".

*The Clean Water Act, and the Safe Drinking Water Act-* In the State of New Mexico, there has been laws, rules and regulations supporting the Aquifer Storage and Recovery Act (ASRA) to direct inject of effluent into the aquifer for recharge and for return flow credit of Rio Grande water rights. \*\*NMSA §§ 72-5A-1 to 72-5A-17.

However, while researching the water quality issues of direct injection CES discovered a serious problem regarding water quality oversight. There is not an adequate oversight process in place, if a bubble occurs from the injection process in the aquifer. If there are contaminant plumes, the bubble spreads the contaminants throughout the aquifer.

**C.) Lack of Storm Water Mitigation**

According to David Hogge, and administrator of the TMDL program \*\* section 303 (d) section 319 at NMED there is in the Santa Fe River high concentrates pollutant of fecal chloroform especially during stormwater events. The City of Santa Fe is considering and making efforts through an ordinance to comply with the deadline of March of 2003 on Storm Water Mitigation statutes. The problem with the ordinance is that it falls short. The City wants to exempt itself from all construction projects currently

being built or considered, which from my reading will not comply with stormwater mitigation laws.

The Public Works Projects in the City which are currently being constructed are not falling under the new Storm Water Ordinance being considered and the County Public works are not in compliance with Area of Potential effect from the outfall point source. Approval for these stormwater ordinances were approved at the public works committee meeting Monday January 14<sup>th</sup>, 2002. For Example the Cerrillos Road Reconstruction project, The Military and Municipal Airport Expansion Projects

**III. THE NMED, CITY, AND COUNTY VIOLATED TITLE VI BY CHOOSING THE SITE OR LOCATION OF DEVELOPMENT AND/OR USING CRITERIA OR METHODS OF ADMINISTERING ITS PROGRAM WHICH HAVE THE EFFECT OF DISCRIMINATING AGAINST LATINOS ON THE GROUNDS OF RACE OR COLOR**

According to EPA's Title VI regulations, 40 C.F.R. § 7.35(c), a recipient of Federal funding shall not choose a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination on the grounds of race or color. Moreover, under 40 C.F.R. § 7.35(b), a recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race or color.

The NMED, City, and County, through approval of the SF Downs landfill and SF Downs Master Plan, Approval to the Signing of the Lease for the Expansion of the Blackhawk Military Facility, the pathway of discovered from Los Alamos National Laboratory threaten the City of Santa Fe water supply, the lack of adequate oversight on the direct injection under the Aquifer Recharge and Recovery Act (ARRA), lack of Stormwater Mitigation have violated 40 C.F.R. § 7.35(b) and 40 C.F.R. § 7.35(c), as they are recipients whose actions, criteria or methods have the purpose or effect of subjecting Complainants and their Latino members to discrimination because of their race or color. This complaint is being filed within 180 days of the NMED, City, and County's final action on the approval for development of the Santa Fe Downs Master Plan on the unpermitted Santa Fe Downs Landfill, approval to the Signing of the Lease for the Expansion of the Blackhawk Military Facility, the pathway of discovered from Los Alamos National Laboratory threaten the City of Santa Fe water supply, the lack of adequate oversight on the direct injection under the Aquifer Recharge and Recovery Act (ARRA), lack of Stormwater Mitigation. This complaint is therefore timely pursuant to 40 C.F.R. § 7.120.

A. EPA Must Consider the Entire Universe of Facilities Which Present a Cumulative Burden and/or which reflect a Pattern of Disparate Impact upon the Area

Under Title VI and EPA's implementing regulations, programs receiving federal financial assistance may not be administered in a manner that has the effect of subjecting individuals to discrimination based upon race or color; To determine the effect of NMED, the City, and the County's approval of the SF Downs landfill and Master Plan, approval to the Signing of the Lease for the Expansion of the Blackhawk Military Facility, the pathway of discovered from Los Alamos National Laboratory threaten the City of Santa Fe water supply, the lack of adequate oversight on the direct injection under the Aquifer Recharge and Recovery Act (ARRA), lack of Stormwater Mitigation EPA must consider the preexisting burden of the area, and the contribution to or compounding of that burden which the new developments present.

It is only by considering the actual and complete cumulative burden upon this community that EPA fulfills its Title VI obligations to prevent the practical effect of subjecting the Latino members of Complainants to discrimination based upon race or color. Any limitation upon of the universe of facilities in the area to be considered is not appropriate in this case, as any such limitation thereby improperly excludes the permitted or regulated facilities/sites that add to the area's cumulative burden, and fails then to provide a true picture of the actual disparate effect of the NMED, City, and County's approval of:

- the Santa Fe Downs landfill and Master Plan,
- approval to the Signing of the Lease for the Expansion of the Blackhawk Military Facility to facilitate appropriations in US Congress,
- the pathway of perclorates discovered from Los Alamos National Laboratory threaten the City of Santa Fe water supply impacting the surrounding communities,
- the lack of adequate oversight on the direct injection under the Aquifer Recharge and Recovery Act (ARRA),
- lack of Stormwater mitigation on a myriad of city, county and state federally funded projects.

Similarly, EPA must consider the entire universe of facilities that have imposed a preexisting burden upon the area in order to properly and completely evaluate whether the approval is part of a broader pattern pursuant to which it has become more likely that all facilities, with their accompanying burdens, will be permitted in a community with

particular racial characteristics. The NMED, City, and County have established a broader pattern pursuant to which it has become more likely that a polluting facility will be permitted in Latino communities than in a non-Latino community. To properly analyze this broader pattern of discrimination, EPA must therefore consider the entire universe of facilities that impact the Latino members of Complainants.

1. **The Santa Fe Downs Landfill and Master plan Inadequate oversight without enforcement of permit violations**
2. **Approval to the Signing of the Lease for the Expansion of the Blackhawk Military Facility, despite active community opposition**
3. **The pathway of perchlorates discovered from Los Alamos National Laboratory threaten the City of Santa Fe water supply,**
4. **The lack of adequate oversight on the direct injection under the Aquifer Recharge and Recovery Act (ARRA),**
5. **Lack of Stormwater Mitigation**

All have been explained in the above.

B. Approval of the Master Plans and Expansion of the Airport and Water Quality impacts Will Add to the Burden of the Disproportionately Impacted Latino Community in the Area

The Santa Fe Downs unpermitted Landfill was not properly remediated and knowingly the County and NMED signed off on the Clean up and approved a subdivision. The nitrate levels in the area are rising causing two cases of Blue baby syndrome. NMED will not do the necessary bacteria or heavy metal water testing to assure water Quality in the area, The air always smells of burning garbage with a public safety issue of a smoldering fires in the pile that spontaneously erupt.

Cancer causing contaminants found in the pathways which is now adjacent to the Santa Fe City and County Water Supply. The appropriate monitoring is not being done.

The purposeful siting of the heavy manufacturing that is up and down prevailing winds of the traditional historic communities. Without the full environmental and historic studies needed to measure the impacts.

C. The Universe of problem Sites Presents a Cumulative Burden Upon the Area and Reflects a Pattern of Disparate Impact Upon Latinos

Continuous development despite opposition, allowed gravel mining operation to occur without compensation to the local communities, distracting and constant noise disruptions, Continued sprawl development without adequate water supply, overcrowded

schools inadequate libraries, additional growth adding stress on the current Waste Water treatment facility, Health and public welfare issues resulting from the cumulative effects, Continued bias toward public participation from community residents this will include the stacking of taskforces and committees that lock out community input. Refer to the previous information.

D. The NMED, City, and County Have Not addressed the Effect of Its Permitting Decision on the Surrounding Population, Including Complainants

There has not been the appropriate analysis, through NEPA and NHPA that includes the impacts to the surrounding traditional and historical communities.

The overwhelming majority of residents within a half-mile, a mile, and five miles are people of color. The municipalities nor the state agencies did not consider data and testimony showing clearly that the greatest potential impact would be borne by residents who were largely of color if these land uses were permitted.

Despite CES Testimony at the State hearings, with State Engineer's office, the NMED and the NM Legislature Committee hearings, that indicated that granting the permit would cause an increase risk to the aquifer on the Aquifer Recovery and Storage Act. (ARSA). \*\*NMSA 1978 §§ 72-5A-1 to 72-5A-17. The Rules and regulations were approved during the evacuation of the event s of 9/11/2001 of the state building and our concerns were dismissed and not properly investigated.

**Examples of more Discriminatory Landuse practices.**

*Phase II of the Agua Fria Stormwater project*

It has included a number of challenges and goals, from installation of sewers, storm sewers and water lines to accommodation of vehicles and pedestrians in a narrow right of way. A number of other utilities were also involved. In projects of such scope, glitches are inevitable. The hydrant placed nearly in the middle of the sidewalk right of way. The contracted crew installed it according to the plan, and now they're waiting for the County to negotiate payment for moving it. Compliance with the Americans with Disabilities Act requires the sidewalk be negotiable by wheelchair. Intersection design and signalization must accommodate the needs of pedestrians, including bus riders and the wheelchair-bound.

That corresponding increases in noise pollution and air pollution and potential human safety and health impacts and the property right takings of the Airport Military and SF Airport Master Plan Expansion and other sitting of manufacturing and heavy



industry with in the Airport Redevelopment District and in the respective communities themselves such as gravel pit mining, cement and asphalt manufacturing , which has a disproportion impact on the minority communities.

Testimony also identified that the State of New Mexico and the County of Santa Fe have been remiss in regulating their rules and regulations. County records identify that the landfill at the Downs has been out of compliance with some of the conditions of its permit for more than 10 years. A state inspection report failed to identify and to report unpermitted effluent being taken out and fires; acceptance of unpermitted materials (such as tires, medical waste. Animal carcasses, etc); and failure to address issues related to storm drainage off these sites.

The Santa Fe Downs agreed to release effluent to the downstream agricultural community without public comment and without the necessary permits.

ANGMC, DOA and DOD entered into a lease agreement with the City of Santa Fe that would allow the Army National Guard to proceed in building a military air base to house 25 Blackhawk helicopters, and applied for appropriations without following NEPA nor NHPA. The failure to consider these issues and the disproportionate impacts on the areas of potential impacts of the facility on the Latino communities are striking. This demonstrably discriminatory impact is illegal under Title VI and its implementing NEPA and NHPA regulations.

The Bureau of Reclamation has supplied funding to the City and County for the planning of the water diversion project and transport water lines throughout the county and city. Unfortunately for the Bureau of Reclamation funds have not included plans for the filtration system needed and cost analysis that would be required to mitigate the pathways of radionuclides that have quite possibly infiltrated the water supply of the City of Santa Fe from LANL- a DOD and DOE site. Nor has any of the planning reports mention mitigation efforts of TOC's or other harmful contaminants to the water supply over time. The failure to consider these issues and the disproportionate impact of the facility on the minority and low-income communities is striking. This demonstrably discriminatory impact is illegal under Title VI and its implementing regulations.

The failure of the City and County of Santa Fe and State agencies including NMED to consider these issues and the disproportionate impact of the facility on the Latino communities is striking. This demonstrably discriminatory impact is illegal under Title VI and its implementing regulations.



IV. THE NMED, CITY, AND COUNTY'S CRITERIA AND METHODS OF HANDLING COMPLAINANTS AND OTHER MEMBERS OF THE PUBLIC WHO SEEK TO ENFORCE TITLE VI HAVE THE EFFECT OF DISCRIMINATING AGAINST COMPLAINANTS AND OTHER PERSONS DUE TO THEIR RACE OR COLOR

EPA's Title VI regulations provide that a recipient of Federal financial assistance shall not use criteria or methods of administering its programs which have the effect of subjecting individuals to discrimination due to their race or color. The NMED, City, and County, are recipients of Federal financial assistance, through their bias, hostility and intimidation toward Complainants and failure to provide full and fair public participation, has used criteria or methods of administering its programs throughout the approval process that have the effect of discriminating against Latino members of Complainants because of their race or color. In addition, the NMED, City, and County have established a pattern or practice of using criteria or methods of administering its programs, which have the effect of discriminating against Latinos because of their race or color.

A. The NMED, City, and County Have Established a Pattern or Practice of Bias, Hostility, and Intimidation in Favor of Industry and Against Latino Complainants, Creating and/or Adding to Discrimination Against Persons Due to Their Race or Color

The NMED, City, and County have established a pattern and/or practice of criteria or methods of administering its programs which has the effect and the intent of subjecting individuals to discrimination due to their race or color. This pattern of bias and hostility has had the effect of creating a disparate impact and discriminating against Latino members of Complainants, as well as other Latinos in the state, because of their race or color.

Established practices and policies of the City and County and NMED; the City and County have staked The Airport Redevelopment District committees and Airport Advisory taskforce in favor of industries and business interest at the Airport, and at the SF Downs have not allowed area residents to participate in county meeting with the owners of the SF Downs. The University of California and the Department of Energy has a disparate proportion of Hispanic and Native American individuals employed due to their race or color.

Under the County 40 year water plan the county is seeking to surround the Community of La Cienega and La Cieneguilla with a County Well field to sink deeper

wells and pump for expansion and development of the residential communities of rancho Viejo and Las Campanas. While implementing this plan the County Violated the Open Meetings Act and failed to give information request under the state public document inspections act, in a timely manner to CES, which affected our ability to file a claim in district court. The request was for the water rights on a well the community of La Cieneguilla. In the County Water plan the County Plans to pump this water install transmission lines and then demand that the residents in the area buy water from the County System. The County is currently conspiring to steal water the traditional and historic community of La Cienega just like the City did to Agua Fria some 25 years ago .

B. The NMED, City, and County's Obstruction of Meaningful Public Participation Has Had the Effect of Discriminating Against Latino Complainants Due to Their Race and Color

At the August 14<sup>th</sup> 2001 meeting a Hispanic woman by the name of [REDACTED] was escorted by County Sheriffs from the Chambers of the County Commission when she spoke to the Commission on the water rights issue and the other environmental issues facing our communities. This was the third time an arrest or that threats of arrests were made against elderly Hispanic women within the last year, who stood to be heard on the issues, which the Commission saw as a challenge to the missions of development in the county and Extra-Territorial Zoning Authority (EZA). The EZA has quasi-judicial powers over what we call Regional Sacrifice Area a.k.a. the historical greater Agua Fria Area. The other two women were threatened with arrest within the last year. The pattern of behavior in the County is to intimidate and cause a chilling effect to public participation in local government. These practices and patterns behaviors clears the way for the discriminatory land use missions of development on minority and low-income populations of the areas. The incident with [REDACTED] happened from a section of the meeting from "matter from the public" after the director of CES tried to address the water rights taking by the County in the Hagerman well issue, and before the Public hearing on the Santa Fe Downs Master plan Approval.

Currently the NMED is considering cutting back the amount of time of public comment from 45 days to 30 days. Many times comments are limited to professional or experts only and the voice of the citizens are then over turned by recommendations by staff to continue with projects based on their professional opinions and do not address the concerns of the public representing the low income and minority populace. This has happened in the Water Quality Control Commission Public Hearings.

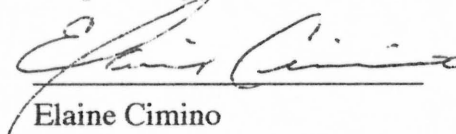
The University of California under contract by the Department of Energy Citizens Advisory Board ( CAB) is stacked with LANL and DOE employees and thwarts citizens public participation through intimidation by embarrassing citizens when they come before the CAB. California Legislature , University of California and LANL does not show up for Public hearings to listen and address concerns from the community, Feb, 1<sup>st</sup>, 2002 and in October of 2001 and a couple meetings previous to this.

The Approval of the Regulations on ARRA was on September 11, 2001 while the offices were being evacuated after terrorist s attack the meeting adjourned in the lounge across the street from the State Land Office, according to an NMED secretary. CES public Comment was not considered despite the repeated attempts to bring the serious problems to their attention.

## V. CONCLUSION

For the reasons set forth above, Complainants allege that the NMED, City, and County's actions in approval of the SF Downs landfill, SF Downs Master Plan, The Santa Fe Airport Master Plan and the US Army National Guard Facilities at the Santa Fe Municipal Airport and other facilities in the area violate Title VI. Accordingly, Complainants request that EPA, FAA, FHWA, DOE, DOD - US ANGMC and the Bureau of Reclamation accept this complaint; deny and terminate all federal financial assistance to the NMED, City, and County; and use any other means authorized by law to obtain their compliance with Title VI.

Respectfully submitted on February 6, 2002,



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